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AUTHOR Stevens, Dwight M.
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ABSTRACT

There is little question that state agencies can have a great deal of influence on collective bargaining. In many states, state departments of education have been actively involved in supporting, proposing, amending, or resisting collective bargaining legislation. State departments ought to come up with answers for streamlining laws and advancing the maturation level of the bargaining process. School board associations, administrators, and state agencies should consider options in streamlining legislation through the art of compromise to seek resolutions without giving up first principles. State agencies must be information brokers. The midst of a teachers' strike is no time for the state department to discover new laws or new interpretations of laws. Such interpretations must be identified in advance, so that everyone knows what role the agency will play. There is growing nationwide support among teacher unions for statewide bargaining. State agencies should oppose this trend and protect the public interest by supporting the resolution of critical issues at the local level. (Author/JG)

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HOW STATE DEPARTMENTS OF EDUCATION INFLUENCE COLLECTIVE BARGAINING AND EMPLOYE STRIKE ACTIONS

May 7, 1976

Presented to
A National Consortium To Study School Strikes
Hershey, Pa.

by

Dwight M. Stevens, Ph.D.
Deputy State Superintendent
Wisconsin Department of Public Instruction

There is little question but what state agencies can and do have a great deal of influence on the collective bargaining process. The very nature of the process permits adversary possibilities for verbal warfare and becomes entwined in the politics of the state in terms of legislative action or reaction and state department of education influence. Collective bargaining for public employees was one of the big legislative issues during the past year. The research and information services department of the Education Commission of the States identified during the year some 45 states that considered collective bargaining legislation affecting educational personnel. With the passing of the busy legislative year and special interest groups countering one another it seems that the broad negotiations picture for education remains essentially the same. The 19 states identified at the end of 1974 as having no mandatory collective bargaining or meet and confer coverage for any sector of their public education personnel have retained their status quo. There are also 19 states which have "right to work" laws. Twelve of these have no collective bargaining laws affecting education. It is common to us all that with or without enabling legislation, collective bargaining is being practiced across the nation. Bills addressing union security and employee rights were high in legislative interest,

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while management rights received little attention. Close to 90 bills sought solutions for the problem of impasse settlement; these included 34 proposing some form of binding arbitration, 32 providing penalties for strikes, and the remainder supporting public employee strike rights. Fourteen bills would have curtailed the scope of bargaining while 10 would have expanded the negotiable areas. There were about 150 teacher strikes during the 1975 year and nearly half that number occurring in Pennsylvania alone. There are 4 states - Hawaii, Oregon, Pennsylvania and Vermont - that provide some kind of strike rights, 22 states that prohibit strikes, 5 states that do not address the strike issue. There are 15 states with legal provisions for binding arbitration, either permissive or mandatory, partial or total for negotiations impasses.

The art of compromise is not only evident at the bargaining table, but it is evident at the legislative level as it pertains to the actions or reactions of state agencies. In the state of Wisconsin, the State Superintendent of Public Instruction presented as one of her major platform issues during an election three years ago, resistance to teacher strikes. The largest teachers' association in the state supported another candidate who supported right to strike legislation. State Superintendent, Barbara Thompson, was voted into office with a landslide number of votes and has not altered her position in terms of opposing the legalization of teacher strikes. I suspect that this type of undergirding of position is not evident in many of the other states, but behind the scenes the state departments of education have been actively involved in supporting, proposing, amending or resisting legislation which affects collective bargaining in the respective states. State departments are in the middle and hopefully most concerned about the advocacy of youth and the welfare of the students in the public schools.

We believe it is necessary to insulate the state education agencies from partisan politics and the spoil system where the political health of the Governor becomes the first and foremost mission. In Wisconsin we can react to collective bargaining as with other legislation on a non-partisan basis because the Superintendent runs on that platform and is one of the two constitutional officers in our state. There is no governmental appointment by the Governor's office nor do we have a state board of education. Wisconsin is unique in that area and able to carve out a position in the collective bargaining process as a result of it. I suspect that Wisconsin is, like other states, having difficulty in this day and age where legislators are attempting to play not only legislative roles but executive and judicial roles as well. Everyone wants to be the self annointed, self appointed representative of the public conscience when it comes to all issues including collective bargaining.

Our state has openly, through the State Superintendent, opposed federal collective bargaining acts for the state and local public employees feeling that this issue along with education generally should be left to the states. Legislation has not come about which would alter the state rights in this area to date. Even though there are at least 5 bills that are alive at the federal level which could impact in this area. It means therefore that state agencies, school board associations and others must stick together in resisting such action. This battle is going to continue in the months ahead.

It is this individual's opinion that state departments might to come up with answers which might be given consideration for streamlining laws and advancing the maturation level of the collective bargaining process.

Legislation in our state very nearly passed during the recent legislative session which would have permitted a limited right to strike and binding arbitration provisions. Our department came up with an alternative which diffused the recommendation of the teacher associations and was basically a new plan referred to as community-based arbitration. The salient points in the plan are as follows:

> Outside arbitration intervention or the right to strike are the sole either/or options that the unions press for. In case of an impasse in negotiations, either party may ask the WERC to initiate Community-Based Binding Arbitration. This is in recognition of the occasional need for third party intervention in the event of impasse after mediation has failed.
>
> A community-based final arbitration panel would be chosen as follows:
>
> > WERC selects 13 school district electors from the voter registry list for school elections under 6.56 Wis. Stats., using a table of random numbers.
> >
> > Relatives of the parties involved on either side would be removed from the list, and other names added until 13 names remain on the list.
> >
> > Each side could then strike 3 names, and the remaining 7 would constitute the panel.
> >
> > The WERC would appoint a non-voting chairperson.
> >
> > The panel may hold public hearings.
> >
> > The panel shall adopt the final offer of one of the parties on each of the issues in dispute.
> >
> > The decision shall be final and binding.
> >
> > The cost shall be divided between the 2 parties, and the Commission - 1/3 each.

I am suggesting therefore that school board associations, administrators and state agencies consider the options in streamlining legislation thru the art of compromise to seek resolutions without giving up first principles.

I do not believe that providing the right to strike or the ability to walk away from the collective bargaining table has anything to do with the resolution of the issues. We must foster the perpetuation of vehicles which lubricate the system and avoid impasse. I further do not believe that an outside arbitrator should be generally relied upon to make decisions which impact upon local communities for months and years ahead. Most professional arbitrators will admit that their purpose is to seek a contract, regardless of the impact of thos decisions. It is for this reason that I basically believe that the local community or residents in the school district should have direct impact upon the final resolution of the issues at the bargaining table. It is the function of the state department of education not only to establish and communicate first principles in terms of state rights and local control, but it is necessary for the agency not to "plant its feet firmly in the air."

Ernie Gross-Rutgers - "Effects of collective bargaining relating to issues other than economic and fringe benefits". The extent of polorization... teachers, adm., bds., public. Effects on the quality of education.

Hortonville- Explain (Timberline, N.H.).

Times change as was evidenced in Wisconsin after the Hortonville strike where strikes have nearly been discontinued subsequent to that action. During the current year there was but one strike in Wisconsin and that was in Madison for 3 days. I guess what I am saying is that if you have some right to the strike process, as is true in this state, it is obvious that the process will be exercised or used. The second part of my mission today is to relate to the state agencies role during strike actions.

I believe a system based upon fear and mistrust cannot endure. Thus it is necessary that the third party neutrality of the state agency must prevail at these difficult times. It is the state's right and responsibility to announce or enunciate the law and the penalties for violating the laws as they might relate to a strike. It is necessary for the state agencies to provide essential information which would communicate the actual status of conditions which are evident in state reports dealing with budget, certification or other areas. When both parties request the state agency to come in to determine the validity of budget matters, we believe it is our role to do so. State agencies must be information brokers. It is further our role to certify teachers either temporarily or permanently and to function during a strike as we would during any other time of the regular school year. This was our practice during the Kortonville strike as with other strikes in Wisconsin history even though the news releases and information released by one of the parties was contrary to that. In fact, we filed a formal deposition with our Attorney General to clearly enunciate our position during the strike. We presented all correspondence that was carried on with the district and a record of the certification practices which we followed. None of the parties nor people generally were interested in that subsequent filing, because most people had their mind made up one way or the other previous to that time. The misinformation and intrigue that accompanies most strikes reinforces the old expression that the sum total of our unsolved mysteries will always remain immeasurably greater than the sum of our discoveries. The midst of a teachers' strike is no time for the state department to discover new laws or new interpretations of laws. These interpretations and legal citings must be identified in advance so that we know full well the role that the agency will play in dealing with the laws that pertain to the length of the school day, the length of the school year, certification standards and practices, the compulsory attendance laws and others such as the requirement to transport students two or nor miles from school which exists in our state.

We have put together a brief pamphlet (explain) that relates to the role of the state agency during teacher strikes and this is useful so that the parties realize what to expect from the agency. We basically believe that the issues should be resolved whenever possible at the local level and that a third party should be brought in when impasse is reached that is acceptable to the parties. Our community-based arbitration model as maverick as it may seem to many, was given a considerable amount of serious attention by our legislature and subsequent to the discussion we have a couple of model school districts who are going to try the procedure to see whether it will work for them.

There is a trend across the country initiated by teacher unions to bring about statewide bargaining. (Cost advantage to the union guarantee of union solidarity).

State agencies should protect the public interest by supporting the notion that the resolution of critical issues should not be taken away from the local communities who must live by what should be custom made, tailor built decisions for the best interest of the youngsters in each locality.

The best defense is a good offense from the state level where issues must be clarified prior to calamities - in this instance, teacher strikes.

We all fight the same battles in having very little time to do the kinds of things that must be done in order to be on the offensive without continually having to defend ourselves or our positions.

I am reminded of Winston Churchill's visit to the Women's temperance society in London.

Our country was founded upon the precept that it is to be governed by consent of the governed. It is with this in mind that we must retain local control even to the point of resolving issues after impasse. I am reminded that there were two strikes in all of Israel's history among physicians and in each case the death rate went down during the strikes. I suspect that most of us would agree that we are going through the growing pains in collective bargaining that were experienced in the 40's and 50's in the private sector. I think, too, that we can agree that state agencies and local school districts can be sure that collective bargaining has destroyed the Greyhound Bus philosophy in education where people used to be able to sit back, relax and leave the driving to us. Wisconsin was the first state to pass a comprehensive collective bargaining act in 1959 and we have experienced in our state most of the growing pains that others have encountered during recent years. Yes, state departments of education do influence collective bargaining and employee strike actions. Future relationships will have a great deal to do with the type of people who are in the leadership positions at the state levels in this country. I am hopeful that we will retain a few optimists who are somewhat thankful for today and who have a strong belief in tomorrow. The Arthur Murray one-step foward and two backward dance cannot be practiced by either side at the bargaining table with the hope of a continuing relationship which will benefit young people. Whether it is the state agency, management or the employees, in each instance the party must recognize its allegiance to first principles which relate to the welfare and best interests of boys and girls. They are the only reason for our existence - boys and girls are the only reason for teachers and administrators to be in school buildings and the only reason for the opportunities to bargain collectively at the table. Unless the general public is convinced of our sincerity, there is no way that collective bargaining or any other process for decision making can continue in the years ahead.

Thank you very much for your kind attention.